Supreme Court, U. S.
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No. 73-759

In the Supreme Court of the United States

OCTOBER TERM, 1973

HON. EDWIN EDWARDS, GOVERNOR OF LOUISIANA, ET AL.,

Appellants,

v.

MARSHA B. HEALY, ET AL.,

Appellees.

On Appeal From the United States District Court For the Eastern District of Louisiana

Supplemental Brief of Appellants Suggesting That The Cause Is Moot

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Supplemental Brief of Appellants Suggesting That The Cause Is Moot

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The appellants in the above-entitled case file this supplemental brief to advise the Court of certain facts which, in appellants' view, render this cause moot:

The questions presented on his appeal are two-fold:

(1) Did the three-judge court abuse its discretion by overruling *Hoyt v. Florida*, 368 U.S. 57 (1961)?

(2) Do the Louisiana constitutional and statutorial provisions that exempt women from service on juries unless they file a written declaration of their desire to serve deny all

of the male and female citizens of Louisiana due process and equal protection as sanctioned by the 14th Amendment of the United States Constitution?

Both of these questions necessarily relate to the existence of Louisiana laws exempting women from service on juries. Pursuant to Act 2 of 1972 of the Louisiana Legislature, a constitutional convention convened on January 5, 1973, for the purpose of framing a new constitution for the State of Louisiana. The constitution drafted by this convention was submitted to and adopted by the citizens of Louisiana at a special election held on April 20, 1974. The new constitution becomes effective at midnight on December 31, 1974. Article V. Section 33 of the new constitution relates to juror qualifications and reads as follows:

(A) Qualifications—A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions—The Supreme Court shall provide by rule for exemption of jurors.

This article does not exempt any persons who have reached the age of majority from jury service. See attached State of Louisiana Constitutional Convention, Verbatim Transcript, Thirty-Sixth Day's Proceeding, August 24, 1973, Vol. XI pp. 98-110. Exhibit 1.

It is thus apparent that there is no occasion for

this Court to pass upon questions which have relevance only to state constitutional and statutorial provisions that have been abandoned.

For this reason, appellants suggest that the issues sought to be raised will be moot, and that the appeal should be dismissed on that ground. See also the draft rule for exemption of jurors prepared by the Permanent Rules Revision Committee of the Supreme Court of Louisiana, attached as Exhibit 2.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief has been served upon counsel for all parties by mailing the same to each, properly addressed and postage prepaid this _____ day of _____, 1974.

Exhibit 1.

STATE OF LOUISIANA
CONSTITUTIONAL CONVENTION
VERBATIM TRANSCRIPT
THIRTY-SIXTH DAY'S PROCEEDING
AUGUST 24, 1973
VOLUME XI pp. 98-110

MR. POYNTER

"Section 36. Jurors; Qualifications; Exemptions

Section 36. The supreme court by rule shall provide for qualification and exemption of jurors."

MR. HENRY

Explain it, Mr. Dennis.

MR. DENNIS

Mr. Chairman, fellow delegates, Section 36 represents a change in our law. We have deleted the requirement that jurors be competent and intelligent. We have deleted the requirement that women cannot serve on juries unless they file a certificate requesting that they be allowed to serve. We have deleted the requirement of the number of jurors who must concur to render a verdict. The new part of this provision is that the Supreme Court shall provide for the qualification and exemption of jurors. The reason we adopted this is that exemptions from jury service have really become much too much of a political matter as handled in the legislature. Interest groups have gone to the

legislature and have gotten exemptions from jury service, so that now many of our most qualified citizens are exempted from jury service by law. We have created exemptions for all kinds of people. Therefore, the committee decided that a body less subject to lobbying pressures should decide upon the exemptions. If we don't do this, we are in danger of all of our better qualified citizens being exempted. We have placed this decision in the hands of the Supreme Court. Since the jury serves the court and is part of it, then judging qualifications is really a judicial matter. We feel this would be the most workable way to handle the problem of granting exemptions to persons for jury service.

MR. POYNTER

Amendment No. 1. On page 13, delete lines 31 and 32 both inclusive in their entirety, and insert in lieu thereof the following:

"Section 36 (A) A citizen of the state, who is (The amendment has been changed. Strike out the word 'residing' and insert in lieu thereof 'domiciled') . . . A citizen of the state, who is domiciled within the parish in which he is to serve as a juror and who has reached the age of majority, is eligible to serve as a juror. The legislature may provide additional qualifications.

(B) The Supreme Court by rule shall provide for exemption of jurors."

MR. HENRY

Explain the amendment, sir.

MR. A. LANDRY

Ladies and gentlemen of the convention, on yesterday I circulated an amendment on which fifty-two of my fellow delegates cosigned with me. It brought to my attention, however, that there might be a possibility that it would be wrong for the Supreme Court to set the qualifications. So I have decided to go along with the Pugh, Gravel amendment, because this is more explicit. Now I think that for the non lawyer delegates, I think I should explain to you the process of jury drawing so that you would understand it and see the problems that we, in the various parishes, have in securing a jury, or a group of men or women for jury service. First, the amendment would do this. It would permit every person upon reaching the age of majority, to be eligible for jury service, which means not only male, but also female would be eligible; under the present constitution only the male can serve on the jury except the female can do it by an affidavit with the clerk. However, by statutes, the Louisiana Legislature has permitted women to serve on civil juries. Now in order to secure jurors, it is necessary for the jury commissioners to get up a list of individuals and it is usually selected, not selected, but it is taken from telephone books, from lists of high schools giving the list of names of persons who have reached the age of eighteen. You have to take it from the city directories. You have to take a list from, in my parish, from the water district, which is all the water meters in the parish, and also all of the registered voters of the parish, which means you have

approximately fifteen to twenty thousand names in the large hopper. You cannot separate the women from the men and then, when you draw a criminal jury, you must draw them at random. In my parish, I use the capsule type of drawing where the jury commissioners do not even know what name they are drawing. Only last week, in order to supplement the jury venire list, we had to draw over fourteen hundred names to put in six hundred and fifty names in the jury venire list, because women kept cropping up. Now this would eliminate that situation. They would be eligible to serve both on criminal and civil juries. The legislature would set the qualifications. At the present time, the qualifications to serve as a juror, under the present criminal code, that you must be a citizen of the United States and have resided within the parish for at least one year; be at least age 21, of course that's been changed to eighteen; three, be able to read, write and speak the English language; four, not be under interdiction or incapable of serving as a juror because of a mental or physical infirmity; and five, not be under indictment for a felony nor have been convicted of a felony for which he has not been pardoned.

Now, that doesn't create a problem to qualification. What really creates the problem for jury service is the exemptions. If you look at the statutes you will find under Article 403 the exemptions from jury service. They include, of course, the governor, the lieutenant governor, the state comptroller, the state treasurer, the secretary of state, superintendent of public

education, their clerks and employees, the members, officers and clerks of the legislature, the judges and active officers of the civil courts of this state. Two, any other public official if jury service would seriously interfere with the performance of the official duties. Three, attorneys at law, their legal secretaries and employees, peace officers, ministers of the gospel, physicians and dentists actively engaged in the practice of their profession, school teachers, school bus drivers, pharmacists, members of paid and volunteer fire departments and persons who are required to travel regularly and routinely in the course and scope of their employment. Four, persons who became of age, sickness or other physical infirmity would suffer serious detriment if required to serve as a juror. Five, persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during a period of three years immediately preceding their selection for jury service.

When we omit all of these people, ladies and gentlemen, what do we have left to serve on the jury? Let me show you an example. There is no leeway under the present set-up to where a district judge, when he calls a venire in for a criminal case, where a man or a woman operates a one-man business. When that person comes into court and asks the court to excuse them for the simple reason that they would have to close their business for maybe a week or two in order to serve on the jury, the judge looks at the statutes and says, "I'm sorry, I cannot excuse you, even though I know it will be a hardship on you and your family."

Right afterwards, another person gets up and walks over to the bar of the court, and he says, "Your honor, I'm a volunteer fireman and I would like to be excused". The judge, under the statutes, has to excuse him. If we continue the way we are going, pressure groups, next time, is going to be the American Legion, the Veterans of Foreign Wars, and somebody else is going to be excused. We want to protect the accused in this state. We want to give them a jury. We want to give them a jury of their peers, ladies and gentlemen. If a school teacher is charged with a crime under the present statutes, there might not be one school teacher that would be willing to serve on the jury and I think under the constitution you have a right to be judged by your peers. This does not permit it and I'm asking you that you vote this proposal in the constitution, thereby permitting people to serve on jury so that our accused can get a fair trial.

MR. HENRY

Does that complete your remarks, sir?
Would you yield to a question from Mr. Kean?
The gentleman yields.

MR. KEAN

Mr. Landry, your Subsection B which provides "the Supreme Court by rule shall provide for exemption of jurors." If the Supreme Court took no action with respect to the rule and someone had a death in the family and wanted to be excused by the district judge from serving on the jury, where would he go?

MR. A. LANDRY

I'm sure that this could be set by rule easily with the Supreme Court, Mr. Kean. It would provide for hardship cases which the statutes do not provide for at the present time.

MR. KEAN

But at the present time, the district judges have the right to excuse, do they not?

MR. A. LANDRY

Under the statutes, yes sir, but they are limited.

MR. KEAN

This would take away the right from the district judges to excuse in the absence of a rule by the Supreme Court.

MR. A. LANDRY

It would not, sir, because I am sure the Supreme Court is familiar with that situation and they would put that in their rule.

MR. HENRY

Any further discussion?
Mr. Deshotels.

MR. DESHOTELS

Mr. Ambroise Landry, I'd like to first of all preface my question by saying I kind of feel like Willis and Gravel with that amendment that Gerald Weiss had. I was a coauthor on your amendment too, as you realize. My question is this. Why are you supporting now, a proposal that has partial qualifications in it? You suggest leaving the qualifications up

to the legislature, yet you have a partial delineation of qualifications in the amendment. Why is that?

MR. A. LANDRY

Because of the fact that under the present statutes and the present constitution, women cannot serve on a jury except if they file an affidavit with the clerk. I personally feel that women should be eligible to serve on a jury.

MR. DESHOTELS

I agree with you on that. But my question is in reference to the phrase, "who is domiciled within the parish in which he is to serve as a juror". Why do you have that particular phrase in there?

MR. A. LANDRY

Because this tracks the old constitution and says you have to be a resident or domiciled in the parish.

MR. DESHOTELS

A resident or residing in the parish.

MR. A. LANDRY

That's correct. And sets the age and sets majority also. If you remember in November of 1972, there was a constitutional amendment on the ballot to provide women to serve on a jury. Of course you know what all amendments happened in November, 1972. People were just against amendments, period. But I think the women of the State of Louisiana certainly would like to have the opportunity, not only to serve on civil jury, but also on criminal jury. That was the reason for our amendment.

MR. DESHOTELS

What's the difference between residing and domiciled, Mr. Landry?

MR. A. LANDRY

Personally, I don't see much difference, Mr. Deshotels.

MR. DESHOTELS

Do you know what domiciled is?

MR. A. LANDRY

You could come into my parish if you want to and declare your domicile. Is that correct, Mr. Deshotels?

I don't see much difference between domicile and residence.

MR. HENRY

Yield to a question from Mr. Flory?

The gentleman yields.

MR. FLORY

Mr. Landry, I'm a little confused too, as a coauthor of your original amendment. Isn't it true that the captain of a ship is supposed to be the last man to abandon the ship rather than the first man?

MR. A. LANDRY

We don't bend any ship.

MR. HENRY

Yield to a question from Mr. Burson?

The gentleman yields.

MR. BURSON

Mr. Landry, isn't it true that under Louisiana

law, specifically the Louisiana Civil Code, that there is a whole section defining what domicile is and that this word would then have a legal meaning under those sections of the civil code?

MR. A. LANDRY

Not being experienced in the law, Mr. Burson, I would think you are probably correct, as you are an attorney.

MR. HENRY

Mr. Singletary for a question.

The gentleman yields.

MR. SINGLETARY

Mr. Landry, do you see any problem in all of these various special interest or pressure groups trying to assert any influence on the Supreme Court instead of the legislature in the future, or do you think . . . .

MR. A. LANDRY

I see a whole lot less problems with a man who is elected, or a group of people who is elected, for ten years than persons who are elected for four years.

MR. HENRY

Are there any questions?

Is there any further discussion on the amendment?

Are you ready for . . .

MR. A. LANDRY

I move the previous question.

MR. HENRY

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore when the machine is opened, as many of you as are in favor of the adoption of the amendment will vote yes, those who are opposed will vote no.

The Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

94 yeas and 15 nays and the amendment stands adopted.

Mr. Landry moves to reconsider the vote by which the amendments were adopted and lay the motion on the table.

Without objection, so ordered.

Are there further amendments to the section, Mr. Clerk?

These other two are not going to be introduced?

MR. POYNTER

The Stinson amendments. Amendment No. 1. On page 13, immediately below line 32, add the following paragraph:

"Notwithstanding any other provision of this constitution, no woman shall be drawn for jury service unless she shall have previously filed with the

clerk of the district court a written declaration of her desire to be subject to such service."

MR. ROY

Explain the amendment, Mr. Stinson.

MR. STINSON

Mr. Chairman, members of the convention, it is with great seriousness that I introduce this amendment. It's a matter that through the years, at least the last three or four sessions that I was a member of the legislature, the same issue came up. The position I take today is the position that I took at that time. This amendment is not in any way to discriminate, is not in any way to state that the ladies of this state are not qualifed to be jurors, but it does say that they have their choice. It's no different from saying that a school bus driver is exempt or a fireman is exempt, or a dentist, or a doctor, or so forth. There are many exemptions. As you know, the exemption that will be set up under the last amendment that was adopted is an exemption that you do not have to claim. You can waive it. When they call the person's name as a prospective juror, they have to claim the exemption. This is an exemption for the ladies of Louisiana without them being required to leave their homes or jobs or wherever they may be, to go into court to claim the exemption. However, the right is given to any female that wishes to serve, to file the intention or desire with the clerk of court, which is in the present constitution. This merely tracks and places in this constitution that provision that was in the 1921 Constitution. I think it has worked well. For a short while,

there was some question whether or not the females could serve and as a practicing attorney, I know that the great, great majority of those that were called went up and asked and begged to get off because they did not want to be forced to serve as a juror. There are many, many cases and it's getting worse, where jury service is more and more distasteful. It is bad for anyone to have to serve on a jury and pass on the destiny or life of some fellow citizen. I feel that that is a thing that our women should not be forced to do unless they wish and desire to do it. As I said before, I am not in any way discriminating against them, belittling them in any way. It says that if they want to, they have the right and they can do it. Now some groups, I'm sure, of the fairer sex will not agree with this, but if there was any way we could take an impartial poll, I would be willing to bet anything that the greater percentage of our female citizens of Louisiana would be in favor of this and not in favor of being forced to jury service. As you know, our cases, criminal cases, are being more involved and taking longer to try them. Some cases, thank goodness, in Louisiana have not gone on as long as in California and other places. But it can be one, and two, and three weeks that a jury would on a case be sequestered. In other words, forced and required to stay together day and night during the duration of that trial. That is a burden that I don't think should be placed on the women of Louisiana. I would like to urge you, let's continue the provisions of the constitution that have worked, in my opinion, well and fairly since 1921.

MR. STINSON

I want to point out again that this is not denying anyone, anything. It is giving a freedom of choice, a choice to serve if you wish. I urge you to let's place this back in the constitution and leave it as it has been through the years. If there are any questions, I'll be happy to answer them.

MR. ROY

Will you yield to a question from Delegate Derbes?

The gentleman yields.

He waives.

Delegate Smith.

MR. SMITH

Mr. Stinson, aren't you for equal rights for women?

MR. STINSON

Yes sir, all women would have the same equal rights under this. Yes sir.

MR. SMITH

Well, don't you think this discriminates against them?

MR. STINSON

What is that, sir?

MR. SMITH

Don't you think it discriminates against the women, not allowing them to serve on juries if . . .

MR. STINSON

This is not denying them. This is preventing them

from being discriminated against by being forced to when they don't want to.

MR. SMITH

You're not mad at the women, are you?

MR. STINSON

No sir, I love the women. Always have and I hope I always will.

MR. ROY

Delegate Hayes.

MR. HAYES

Mr. Stinson, do you know how this is handled in other states? Do ladies serve on jury duty in any other states that you know about?

MR. STINSON

To my best knowledge, in most of the states, now I could be wrong, I haven't researched it, I think they've had like we have where it's optional if they wish to qualify for that.

MR. HAYES

Do they serve in the federal system here in this state?

MR. STINSON

They do, yes.

MR. HAYES

They do serve on the federal courts?

MR. STINSON

Yes, sir.

MR. HAYES

They don't have the option.

MR. STINSON

No, sir.

MR. ROY

Will you yield to a question from Delegate Burns?

The gentleman yields.

MR. BURNS

Mr. Stinson, you've stressed the inconvenience of ladies serving on juries. If they want equal rights, don't you think they ought to take the bitter along with the sweet?

MR. STINSON

No sir, I think they are too sweet to serve on the juries, in answer to your question.

MR. ROY

That's all. Thank you, Mr. Stinson.

Mr. Shannon. Mr. Shanon, you are recognized.

MR. SHANNON

Mr. Chairman, I believe we were ready to vote on this thirty minutes ago, and I think everyone knows how they are going to vote now. I move the previous question on the entire subject matter.

MR. ROY

Is there objection?

Under the rules, I must tell who is to speak. Mrs. Zervigon. Do you waive, Mrs. Zervigon?

MRS. ZERVIGON

Mr. Chairman, the motion was the previous question on the entire subject matter. Before I know

whether I want to waive or not, I'd like to know whether there are other amendments up there.

MR. ROY

There are no other amendments.

MR. STINSON

Mr. Chairman, in view of the fact that I believe in freedom of, especially the ladies, I'd like to answer the question. I think you can get in your argument by a question, please ma'am.

I yield to the question.

MR. ROY

Mrs. Brien.

MRS. BRIEN

I'd like to ask you, do you believe what was told to Lady Macbeth? Woman, thy name is frailty." So do you think we are too frail to act as jurors?

MR. STINSON

No ma'am, I thought what they told her was to go put her clothes on.

MR. ROY

Are there any other questions?

Mr. Stinson, if there are no other questions, the previous question has been moved.

Therefore, if you are finished, I will go forward with the motion.

MR. STINSON

I'll imitate Mr. Jack. I won't take much time, but I would like to urge, as I said, I'm not being frivolous, I'm not belittling the ladies in any way. I'm giving

them a freedom of choice. The different groups like to have their option as to whether they should serve or not, and under this, any lady that wants to serve can serve. It's been the law. We've debated in the legislature, and fortunately the wisdom of the legislature in the past has been to leave it as it is in the present constitution. So I urge you, let's vote here and give the ladies the freedom of choice because there are a lot of ladies that don't want to serve. Your wife, more than likely doesn't want to serve. If she wants to serve, let her go register and serve. Your daughters and different ones. This is a freedom of choice which I think nowadays most everyone has decided is very important. Don't put the burden on the ladies if they don't want it, but give them the right, they who wish to do so. I'd like to urge you to adopt this amendment. I say it's freedom of the ladies not in any way discriminating against them or doing away with their rights. They are certainly not frail enough . . . I'll tell you the last case I had, jury case, before they knew it I had four ladies on the jury and I accepted them. I won the case and they were good jurors. But still, I don't want to force it on those that do not want to. This is giving them the right and the privilege. In thanking you, I'd like to urge you to please vote favorably for this amendment.

MR. ROY

Mr. Stinson sends up amendments to which objection is urged.

Therefore when the machine is opened, as many of you . . .

This is a record vote.

As many of you who are in favor of the amendment will vote yes, those opposed will vote no. The Clerk will open the machine.

10 yeas and *102* nays and the amendments stand rejected.

Mrs. Zervigon moves to reconsider the vote by which the amendments were rejected and to lay the motion on the table.

Is there objection?

Without objection, so ordered.

Are there any further amendments, Mr. Clark?

MR. POYNTER

Not to this section.

MR. ROY

Mr. Landry, Ambroise Landry, moves to adopt the section.

Is there any further discussion?

Are you ready for the question?

Without objection, the question is ordered

Therefore when the machine is opened, as many of you who are in favor of the section will vote yes, those opposed will vote no.

The Clerk will open the machine.

Vote your machines, gentlemen.

Are you through voting?

The Clerk will close the machine.

110 yeas and *2* nays and the section stands adopted.

Mr. Landry moves to reconsider the vote by which the section was adopted and lay the motion on the table.

Without objection, so ordered.

Exhibit 2.

SUPREME COURT OF LOUISIANA

(DRAFT)
ORDER

Pursuant to the authority vested in this court by Article V, Section 33(B) of the Louisiana Constitution of 1974, the following rule for exemption of jurors is hereby adopted as part of the Revised Rules of this court, designated as PART F, GENERAL RULES OF PROCEDURE, Rule XXV, Exemption of Jurors, and is effective January 1, 1975, superseding LSA-R.S. 13:3042, as amended, R.S. 13:3056, as amended and Articles 402 and 403 of the Louisiana Code of Criminal Procedure, as amended:

Section 1. It is the policy of this court that all litigants in Louisiana courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the parish wherein the district court convenes, that all qualified citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of Louisiana and shall have an obligation to serve as jurors when summoned for that purpose, and that no citizen shall be excluded from service as a grand or petit juror of the district courts of Louisiana on account of race, color, religion, sex, national origin or economic status.

Section 2. This court finds that the exemption of the following groups or occupational classes is in the public interest and, accordingly, members of such classes are exempt from jury service:

(a) Public officers in the executive, legislative, or judicial branches of the Government of the United States, or the State, or any subdivision thereof, who are actively engaged in the performance of official duties;

(b) Members in active service in the Armed Forces of the United States and members of the National Guard of this State while on active service;

(c) Members of paid fire or police departments of the State or any subdivision thereof and federal law enforcement officers;

(d) Members of the following groups when regularly and actively engaged in the practice of their professions: attorneys at law, ministers of the gospel, chiropractors, physicians, dentists, pharmacists and optometrists;

(e) All persons over seventy years of age;

(f) Persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during a period of three years immediately preceding their selection for jury service.

Section 3. Any person may waive his exemption from jury service.

Section 4. Any person summoned for jury service may be excused, upon a showing of undue hardship or extreme inconvenience, for such period as the trial

court deems necessary, at the conclusion of which such person shall be summoned again for jury service.

Given our hands and seal this day of , 1974, A.D., in New Orleans, Louisiana.

Joe W. Sanders, Chief Justice

Frank W. Summers, Associate Justice

Mack E. Barham, Associate Justice

Albert Tate, Jr., Associate Justice

John A. Dixon, Jr., Associate Justice

Pascal F. Calogero, Jr., Associate Justice

Walter F. Marcus, Jr., Associate Justice

B-4844, 10-74